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Applicant(s): Leonard R. Kilby, et al.

Docket No.

79123-1131

Application No.

10/670,113

Filing Date

9/24/03

Examiner

Sameh Tawfik

Group Art Unit

3721

Invention: **PATTERN FORMER & METHOD OF PATTERN FORMING FOR WRAPPED BAKERY PRODUCTS**

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Reply Brief for Appellants

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TRANSMITTAL LETTER  
(General - Patent Pending)Docket No.  
79123-1131

In Re Application Of: Leonard R. Kilby, et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10-670,113	9/24/03	Sameh Tawfik	38406	3721	8154

Title: PATTERN FORMER &amp; METHOD OF PATTERN FORMING FOR WRAPPED BAKERY PRODUCTS

COMMISSIONER FOR PATENTS:

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Reply Brief for Appellants

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**In re Application of:**

LEONARD R. KILBY, et al.

Serial No. 10/670,113

Filed: September 24, 2003

For: Pattern Former and Method of  
Pattern Forming for Wrapped  
Bakery Products

Examiner: Sameh Tawfik

Art Unit 3721

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

BEFORE THE BOARD OF  
PATENT APPEALS AND  
INTERFERENCES

## REPLY BRIEF FOR APPELLANTS

TO THE HONORABLE MEMBERS OF THE BOARD  
OF PATENT APPEALS AND INTERFERENCES:

Washington, D.C. 20231

**This is a Reply Brief in response to the Examiner's Answer of October 25, 2006.**

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No. 2072 P. 4/8

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STATUS OF CLAIMS

Claims 1-62 have been cancelled. Claims 63 and 64 are pending, and the rejection of  
Claims 63 and 64 is being appealed.

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner rejected both Claims 63 and 64 under 35 U.S.C. § 102(b), but cited a different prior art reference to support each rejection. The basis for Applicants' response to each rejection is different, i.e., each prior art reference is missing a different element of the claim for which it is the basis of the Examiner's rejection. Thus, Applicants respectfully submit that both Claims 63 and 64 cannot stand or fall together in this Appeal, but rather must be examined separately.

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ARGUMENT

It is again submitted that the Examiner has improperly rejected Claims 63 and 64 on the basis of anticipation under 35 U.S.C. § 102(b) because the cited prior art references (U.S. Patent No. 4,522,292, to Euverard et al. ("Euverard"), and U.S. Patent No. 5,317,859, to Schneider et al. ("Schneider")) do not disclose all of the requisite steps of Claims 63 and 64. In particular, Euverard does not disclose the step of "arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus." Schneider does not disclose the steps of "moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus."

With respect to the Examiner's continued position as to claim 63, Applicants again point out the inconsistencies in the Examiner's rejection. First, the Examiner states on page 3 of the Final Office Action that the infeed conveyor 21 and grouping gate 27 of Euverard disclose the grouping apparatus of claim 63. The Examiner goes on to state that the endless conveyor belt 25 of the infeed conveyor 21 discloses the transfer apparatus of Claim 63. But the Examiner takes an inconsistent position on page 5 of the Final Office Action stating that the grouping gate 27 of Euverard alone discloses the grouping apparatus and that the infeed conveyor 21 discloses the transfer apparatus. Then, on page 6 of the Examiner's Answer, the Examiner sets forth that the grouping apparatus of claim 63 is disclosed via grouping gate 27 of Euverard and that the transfer apparatus of claim 63 is disclosed by the conveyor 25 of Euverard. Therefore, the

Examiner has posited three distinct combinations of elements for performing the *function* of a grouping apparatus and a transfer apparatus respectfully. As contemplated by Euverard, and as argued in prior briefing, this simply cannot be the case. Again, it is respectfully submitted that none of these arguments support the rejection of Claim 63, and that the rejection should therefore be reversed. Moreover, because Euverard discloses the same device for both grouping bakery products and transferring them onto the turntable, i.e. the infeed conveyor 21, Euverard does not disclose each and every step of Claim 63 and cannot anticipate same.

Most importantly, Applicants again point out that claim 63 includes the step of "arranging groups of between 1 and about 6 wrapped bakery products *on* the grouping apparatus" (emphasis added). In Euverard the wrapped bakery products are not arranged *on* the grouping gate 27, but rather are lined up on the endless conveyor belt 25 *behind* the grouping gate 27. Claim 63 specifically sets forth that the wrapped bakery products are arranged *on* the grouping apparatus, and therefore, cannot be equivalent to the arranging of Euverard which does not occur *on* the grouping gate 27.

As to the rejections of claim 64, the application requires that patterns of bakery products be moved *directly* from the turntable into bakery trays. In Schneider there are two steps between the turntable and the bakery trays. Thus, it is respectfully submitted that Schneider does not disclose the element of "moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus," and therefore does not disclose all of the claimed limitations of claim 64.

Furthermore, Schneider simply does not disclose the step of forming a pattern of wrapped bakery products on the turntable or the step of forming a *subsequent* pattern of wrapped bakery products on the turntable during movement of a *previous* pattern of wrapped bakery products

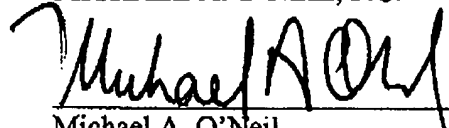
into a bakery tray under the action of the transfer apparatus. First, despite any turntable rotation in Schneider for the purpose of re-arranging or forming a pattern of bakery products, the pattern itself is not formed on the turntable, it is formed on the conveyor assembly 80. Therefore this cannot be considered as forming a pattern of bakery products on the turntable. Likewise, as argued in prior briefing, the transfer conveyor assembly cannot handle two patterns simultaneously as can the turntable in the claimed invention, and thus Schneider does not disclose this step of Claim 64 and cannot anticipate same.

### III. CONCLUSION

The Examiner's 35 U.S.C. § 102(b) rejection of claims 63 and 64 of the Application are fatally flawed because neither the Euvarard nor the Schneider reference discloses each and every step of the methods of the rejected claims.

Respectfully submitted,

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